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DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BARTELL HOTELS, A California Limited
Partnership, dba HALF MOON ANCHORAGE,

Plaintiff,

v.

M/Y CLAIRE IRENE, a 1968 Owens Motor
Yacht of Approximately 40-Foot In Length And
11-Foot In Beam, Bearing California D.M.V.
Registration No. CF 8646 ED, AND ALL OF
HER ENGINES, TACKLE, ACCESSORIES,
EQUIPMENT, FURNISHINGS AND
APPURTENANCES, *in rem*,

Defendant.

Case No. 07cv2097-L(BLM)

IN ADMIRALTY

~~SECOND PROPOSED~~ ORDER
APPOINTING SUBSTITUTE
CUSTODIAN AND
AUTHORIZING MOVEMENT OF
VESSEL

F.R.C.P. Supplemental Admiralty
Rules C and E.

Plaintiff, BARTELL HOTELS, a California Limited Partnership, dba HALF MOON
ANCHORAGE (hereinafter "PLAINTIFF"), by and through its attorney, Weiss & Jones,
L.L.P., having appeared and made the following recitals:

1. On or about ~~January 11, 2008~~ ^{December 6, 2007} PLAINTIFF filed its First Amended Verified
Complaint praying that M/Y CLAIRE IRENE, a 1968 Owens Motor Yacht of Approximately
40-Foot In Length And 11-Foot In Beam, Bearing California D.M.V. Registration No. CF
8646 ED and all of her engines, tackle, accessories, equipment, furnishings and

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1 appurtenances ("DEFENDANT VESSEL"), be condemned and sold to pay PLAINTIFF's
2 demands and for other proper relief.

3 2. Pursuant to an Order of this Court upon Application by PLAINTIFF, the Clerk of
4 this Court will issue a Warrant for Arrest of the DEFENDANT VESSEL, commanding the
5 United States Marshal for this District to arrest and take her into custody and to detain her in
6 his custody until further Order of this Court respecting same.

7 3. It is accordingly expected that the United States Marshal will arrest the
8 DEFENDANT VESSEL forthwith. Custody by the United States Marshal requires the
9 services of one or more keepers, and does not include charges for wharfage and the other
10 services usually associated with safekeeping vessels similar to the DEFENDANT VESSEL.

11 4. The DEFENDANT VESSEL is located in a slip among those at PLAINTIFF's
12 marina, located at 2131 Shelter Island Drive, San Diego, California. PLAINTIFF has agreed
13 to assume the responsibility for safekeeping the said DEFENDANT VESSEL and has
14 consented to act as her custodian until further Order of this Court. It will provide, as
15 necessary under the circumstances, the following services for the safekeeping of the
16 DEFENDANT VESSEL, at a cost not to exceed prevailing rates of the Port ^{of San Diego} as described
17 with further particularity in the Declaration of Richard Bartell: *filed January 11, 2008*:

18 a. Assume custody of the vessel from the United States Marshal at the place of her
19 arrest, and keep her at its Marina until further Order of the Court;

20 b. As soon as possible after assuming custody of the vessel, photograph and/or
21 video tape the interior and exterior, and prepare a written inventory of equipment and
22 property aboard which is not installed as part of the vessel;

23 c. Periodically inspect mooring lines/fenders to assure safe and secure mooring;

24 d. Periodically as deemed prudent under the existing circumstances, but no less
25 than weekly, inspect the vessel for watertight integrity, excessive bilge water and fuel,
26 lubricant or other leaks. Where further action beyond those detailed herein is deemed
27 necessary to preserve the vessel, PLAINTIFF shall advise counsel, so counsel can seek an
28 appropriate order from the Court;

1 e. Provide additional services such as cleaning, minor maintenance, inspection of
2 bottom by a diver for the purpose of cleaning and reporting findings regarding underwater
3 hull, metal and zinc conditions, as such services are deemed prudent;

4 f. PLAINTIFF will operate only machinery described in a proper Court order;

5 g. Provide other such services as may be required from time-to-time, by further
6 order of the Court. All services will be invoiced at rates not exceeding those prevailing in the
7 Port of San Diego, and shall be subject to approval by the Court.

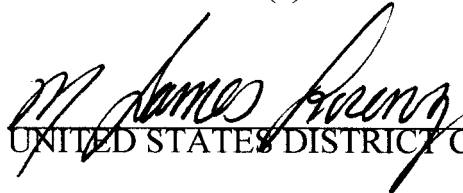
8 5. PLAINTIFF, in consideration of the Marshal's consent to the substitution of
9 custodian, agrees to release the United States and the U.S. Marshal from any and all liability
10 and responsibility arising out of the case and custody of the DEFENDANT VESSEL, her
11 engines, boilers, tackle, apparel, furnishings, appurtenances, etc., and all other necessities
12 thereunto appertaining and belonging, from the time the Marshal transfers possession of said
13 vessel over to said Substitute Custodian, and further agrees to hold harmless and indemnify
14 the United States and the Marshal from any and all claims whatsoever arising out of the
15 Substitute Custodian's possession and safekeeping; and

16 **THEREFORE, IT IS HEREBY ORDERED** that the United States Marshal for the
17 Southern District be, and is hereby, authorized and directed upon seizure of the
18 DEFENDANT VESSEL, her engines, boilers, tackle, apparel, furnishings, appurtenances,
19 etc., and all other necessities thereunto appertaining and belonging, pursuant to the Warrant
20 for Arrest to surrender the possession thereof to the Substitute Custodian named herein, and
21 that upon such surrender the Marshal shall be discharged from his duties and responsibilities
22 for the safekeeping of said vessel and held harmless from and against any and all claims
23 whatever arising out of said substituted possession and safekeeping; and

24 **IT IS FURTHER ORDERED** that PLAINTIFF be, and is hereby appointed, the
25 Substitute Custodian of said vessel to retain the same in its custody for possession and
26 safekeeping, with the authority to move the DEFENDANT VESSEL within its marina, for
27 the aforementioned compensation and in accordance with the Declaration of Richard Bartell
28 *filed January 11, 2008* and the recitals herein contained until further Order of this Court; and

1 **IT IS FURTHER ORDERED** that PLAINTIFF's attorney will serve by mail a copy
2 of said Order to the person(s) believed to be the owner(s) of the DEFENDANT VESSEL.

3
4 DATED: January 30, 2008


UNITED STATES DISTRICT COURT JUDGE

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6
7 Respectfully submitted

8 on January 10, 2008

WEISS & JONES

9
10 By: 

Philip E. Weiss, Esq.
Attorney for Plaintiff
Bartell Hotels,
a California Limited Partnership,
dba Half Moon Anchorage